

David Stern  
Coolidge House  
307 Huntington Avenue  
Boston, MA 02115

November 20, 2004

Honorable Nancy Gertner  
United States District Judge  
District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

RE: David Stern v. David Winn CA No. 04-10465-NG

Dear Judge Gertner,

Notwithstanding your allowance of Respondent's Motion to Dismiss by Memorandum and Order dated October 29, 2004, it is imperative that the Court is made aware of the retributive and arbitrary manner in which the BOP has operated, without accountability, in open contempt for the Court's authority and in complete disregard of its Orders.

On October 13, 2004, following the Court's Order of September 17, 2004, I was transferred to Barnstable County Correctional Facility (BCCF), a medium-high institution, from FMC Devens-Camp, where I was one of only two town drivers. Irrespective of my documented medical condition, I was assigned to employment at a dust laden woodworking factory, which looked like something out of a Dickens' work house (there wasn't even water available for employees to drink). I immediately experienced a tightening of my chest and difficulty breathing consistent with my asthma. I was removed from the site by Ken Fraser, director of community corrections, who told me that had he known of my medical condition, he never would have qualified me for the BCCF program. I pointed out to him that his office had had a copy of my PSI, which well documented my conditions. He stated that in order to facilitate my transfer (he was unspecific regarding where that somewhere would be), he would have to write up an incident report, which after investigation was expunged. Upon my return that day to BCCF, I was placed in administrative segregation, a 23 hour lock down...for three weeks until I was finally transferred to Coolidge House on November 3, 2004.

Since my arrival, I have been targeted by BOP Community Corrections Manager David Dwyer and subjected to the kind of retribution the Court alluded to in Monahan v. Winn. I have tried to address the issues directly with Mr. Dwyer, see attached letter, but to no avail. I have tried to informally resolve the issues with AUSA Sternberg with identical non-results (see attached).

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It appears that the Bureau of Prisons may do whatever it likes and without cause. I cannot and will not believe that the Court countenances unequal treatment for anyone, regardless of whether one is an inmate or not, especially an inmate whose conduct is exemplary (see attached). While I recognize that the Court's powers may be limited, the duty to insure that its Orders are followed, both in letter and in spirit, is fundamental, especially in light of the Court's language in its Order of September 17, 2004: "This Court will trust that respondent will act in good faith..."

I find myself at the dusk of this ordeal without the emotional resources required to continue, and ask the Court to act sua sponte in any way it deems meet and just. It is ironic that in the matter of David Stern v. United States, Supreme Court docket No. 04-385, the Solicitor General in reply to my Petition for a Writ of Certiorari stated "...if the Court were to hold that Blakely applies to the Guidelines, the proper disposition of petitioner's claim could be affected by such a holding..."

It is hoped that the punishment imposed by the Court should not be increased by the actions of the BOP and its obvious attempt to "get even" with someone whose only "crime" at this point is the lawful attempt to seek redress in the Court. In light of the effect these actions set forth in the attached letters has upon my family at this holiday season, I would ask the Court to take immediate action to right this wrong.

Yours, very truly,

  
David Stern

Cc: Jeremy Sternberg, AUSA w/o enclosures

David Stern  
Coolidge House  
307 Huntington Avenue  
Boston, MA 02115

November 19, 2004

Jeremy Sternberg  
Assistant United States Attorney  
District of Massachusetts  
1 Courthouse Way  
Boston, MA 02210

Dear Mr. Sternberg,

I never anticipated the need to write to you subsequent to my transfer to Coolidge House following my protracted ordeal at Barnstable County Corrections Facility, but as the famous Scot poet, Robert Burns, once said, "The best laid plots of mice and men..."

Hope springs eternal that the two issues I am about to raise with you can be and will be resolved expeditiously and informally. The first is one of simple calculation. Although Judge Gertner denied my motion regarding the BOP's improper calculation of good time for procedural reasons, she nevertheless found on page two of her Memorandum and Order dated October 29, 2004 that the final 10% of my sentence is 3 months prior to my release; to wit: December 9, 2004, not December 21, 2004 as incorrectly set forth on the "Sentence Monitoring Computation Data", a copy of which is attached. I trust that correcting this will not present any problem and can be effectuated without further ado.

The second and quite frankly more disturbing issue is codified in my letter to David Dwyer dated November 17, to which I have yet to receive a reply, which is also attached. Without going into finger pointing or assertions of bad faith and retribution, suffice it to say that ever since my arrival at Coolidge House I have been targeted. Mr. Dwyer limited my job search to Massachusetts, although other Rhode Island residents are not so limited; he has predetermined that I must remain at Level Two, although I have in all other respects fulfilled the requirements for Level Four (see the attached portion of the Coolidge House handbook). The net effect is that I am not permitted home furloughs or daily leisure time. There is no question that I am being singled out. My inmate conduct was perfect (see attached) and there is no reason other than that given me regarding my ownership interest in online-registries, Inc. (OLR), which is simply without foundation. For example, my Probation Officer, Clara King in aware of my ownership interest, I suspect you are (certainly my pleadings were sufficiently clear), and Judge Gertner was aware of my involvement with OLR, so much so that she even stated as much on page five of the October 29, 2004 Memorandum and Order. What is happening is neither right ,nor permissible.

I seek only a speedy and reasonable resolution, especially in light of the fact that Thanksgiving is less than a week away, a day I should be with my family, if I was being treated equally with others and consistent with Coolidge House policy and practice. In actuality, I should be taking my first 12 hour home furlough tomorrow, May I remind you that my conduct at Devens as an inmate was sufficiently meritorious to receive a home furlough and that I reached a level of trust that I was only one of two "town drivers".

I have secured interim employment in Newton and may be reached by phone (617) 332-2611 or if someone calls in advance, a fax may be received at the same number. I will be in Newton until 6:00 pm by which time I trust that these matters can be put to rest and you will never have to hear from me again, which I am sure will please you no end.

Yours very truly,

David Stern

Enclosures

David Stern  
23799-038  
Coolidge House  
307 Huntington Avenue  
Boston, MA 02115  
November 17, 2004

David Dwyer  
Community Corrections Manager  
U.S. Department of Justice  
Federal Bureau of Prisons  
JFK Federal Building  
Suite 2200  
Boston, MA 02203

Dear Mr. Dwyer,

I am writing this letter hopefully to clear up a "misunderstanding" regarding my alleged statement to someone at BCCF concerning online-registries, Inc. (OLR).

I have been told that I cannot be assigned to Level Four here at Coolidge House, despite the fact that in all respects I am eligible to do so because apparently I told someone at BCCF that I had no ownership interest in OLR. I had no conversations regarding the same except that upon arrival I gave Mary Beth a copy of a letter to Barry Weiner, Chief USPO, District of Rhode Island from Warden David Winn (see attached), a copy of the OLR brochure and told her that I was hoping to work for the company as soon as possible. Michele Ritter, who has served as president of OLR in my absence was present for the entire conversation. Further, I had a brief discussion with Ken Fraser as he was returning me to BCCF from the Mill Stores during which he said that, for my information, the BOP would not permit me to work for a company in which I had an interest for accountability reasons (although I now know that that statement is not 100% accurate). My ownership interest in OLR is very well documented in both my PSI (a copy of which the staff at BCCF had) and in pleadings filed in Stern v. Winn, CA No. 04-10465-NG. Also upon my arrival at Coolidge House, I submitted a job offer from OLR, which was rejected. In response to a question from Janet Radley, I readily acknowledged that I had an ownership interest in OLR.

There are literally scores of people and dozens of documents confirming my interest in OLR. Any assertion that I denied having any interest is simply incorrect.

I hope that you withdraw your opposition to my Level Four designation. I have done everything ever asked of me as an inmate and it seems that I am being further "punished" without cause. I wish to resolve this matter speedily and amicably and ask that you reconsider your position.

Yours very truly,

David Stern

DEVBZ  
PAGE 001

## PROGRAM REVIEW REPORT

07-12-2004  
18:34:05

INSTITUTION: DEV DEVENS FMC

NAME: STERN, DAVID G  
RESIDENCE: NEWPORT, RI 02840

REG. NO: 23799-038

TYPE OF REVIEW: ~~INITIAL CLASSIFICATION~~/PROGRAM REVIEW  
NEXT REVIEW DATE: 10/04

PROJ. RELEASE DATE: 03-09-2005  
PAROLE HEARING DATE: NONE

RELEASE METHOD: GCT REL  
HEARING TYPE: NONE

DATE OF NEXT CUSTODY REVIEW: n/g DETAINERS (Y/N): N

CIM STATUS (Y/N): N IF YES, RECONCILED (Y/N): NO

PENDING CHARGES: none known

OFFENDER IS SUBJECT TO NOTIFICATION UNDER 18 U.S.C. 4042(B) (Y/N): NO  
IF YES - CIRCLE ONE - DRUG TRAFFICKING/CURRENT VIOLENCE/PAST VIOLENCE

CATEGORY	CURRENT ASSIGNMENT	EFF DATE	TIME
CMA	PROG RPT	NEXT PROGRESS REPORT DUE DATE	11-09-2004 0904
CMA	RPP COMPLT	RELEASE PREP PGM COMPLETE	04-23-2004 1333
CMA	RPP UNT C	RELEASE PREP UNIT PGM COMPLETE	04-21-2004 1332
CMA	V94 COA913	V94 CURR OTHER ON/AFTER 91394	02-11-2003 0905
CUS	COM	COMMUNITY CUSTODY	08-05-2003 1504
DRG	DRG I NONE	NO DRUG INTERVIEW REQUIRED	02-11-2003 0904
DST	CBN 3ZS	BARNSTABLE CO WORK REL CTR-MA	01-06-2005 1200
EDI	ESL HAS	ENGLISH PROFICIENT	02-11-2003 0905
EDI	GED HAS	COMPLETED GED OR HS DIPLOMA	02-11-2003 0905
FRP	COMPLT	FINANC RESP-COMPLETED	03-13-2003 1306
LEV	MINIMUM	SECURITY CLASSIFICAT'N MINIMUM	10-11-2002 1020
MDS	REG DUTY	NO MEDICAL RESTR--REGULAR DUTY	01-22-2003 0908
MDS	YES F/S	CLEARED FOR FOOD SERVICE	01-28-2004 1252
QTR	I01-045U	HOUSE I/RANGE 01/BED 045U	01-08-2003 1256
RLG	NO PREFER	NO PREFERENCE	02-11-2003 0906
WRK	VACATION	VACATION	07-12-2004 0001

WORK PERFORMANCE RATING: Consistently receives

outstanding work evaluations.

INCIDENT REPORTS SINCE LAST PROGRAM REVIEW: None, he has

clean conduct.

FRP PLAN/PROGRESS: Completed financial obligation, 3/03.